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August 6, 2018

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket 18-141*

Dear Ms. Dortch:

Pursuant to the *Public Notice*, *Extension Order*, and *Protective Order* in the above-captioned proceeding,¹ Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MetTel”), submits for filing the Public version of its Opposition to the petition for forbearance filed by USTelecom – The Broadband Association.² MetTel has filed the Highly Confidential version of the Opposition by hand with the Office of the Secretary.

Please contact me if you have any questions regarding this submission.

¹ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Public Notice, DA 18-475 (rel. May 8, 2018) (“*Public Notice*”); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Order, DA 18-574 (rel. June 1, 2018) (“*Extension Order*”); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Order, DA 18-574 (rel. June 1, 2018) (“*Protective Order*”).

² *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed May 4, 2018) (“*Petition*”).

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Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Counsel for MetTel

Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-)	
Generation Networks)	

OPPOSITION OF METTEL

Pursuant to the *Public Notice* and *Extension Order* in the above-captioned proceeding,¹ Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MetTel”), through its undersigned counsel, hereby submits this opposition to the petition for forbearance filed by USTelecom – The Broadband Association (“USTelecom”) in the above-captioned proceeding.² As discussed herein, MetTel’s opposition focuses specifically on the subset of Category 1 that includes the avoided-cost resale mandate in Section 251(c)(4) and the associated obligations in Sections 251 and 252.³

The Petition Does Not Meet the Statutory Standard for Forbearance. Under the statutory standard for forbearance set forth in Section 10 of the Communications Act,

¹ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Public Notice, DA 18-475 (rel. May 8, 2018) (“*Public Notice*”); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Order, DA 18-574 (rel. June 1, 2018) (“*Extension Order*”).

² *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed May 4, 2018) (“*Petition*”).

³ See *Public Notice* at 1.

USTelecom must show that competition renders Section 251(c)(4)⁴ and the related regulations unnecessary. Section 10 establishes a three-prong, conjunctive test,⁵ pursuant to which USTelecom must show that (1) enforcement is “not necessary to ensure that charges, practices, classifications, or regulations” are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulations and statutory provision is not necessary to protect consumers; *and* (3) forbearance from applying the regulations and statutory provisions is consistent with the public interest.⁶

Like all petitioners for forbearance, USTelecom bears the burden of proof “at the outset” of the proceeding “and throughout the proceeding.”⁷ This “encompasses both the burden of production and the burden of persuasion” and therefore includes “providing convincing analysis and evidence” to support the Petition.⁸ USTelecom has not come close to carrying its burden.⁹

USTelecom’s utter failure to support its assertion that competition renders avoided-cost resale unnecessary is fatal to the Petition insofar as it seeks forbearance from Section 251(c)(4) and the related provisions. This is especially true to the extent that those requirements apply to TDM-based telephone service provided via copper networks to business customers (“traditional TDM service”). What little data USTelecom provides reveals nothing about the level of

⁴ 47 U.S.C. § 251(c)(4).

⁵ See 47 U.S.C. § 160(a); *see also Verizon v. FCC*, 770 F.3d 961, 964 (D.C. Cir. 2014) (“The three conditions of § 10(a) are conjunctive and the Commission can ‘properly deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied.’”) (quoting *CTIA v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003)).

⁶ 47 U.S.C. § 160(a).

⁷ *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd. 9543, ¶ 20 (2009) (“*Forbearance Procedures Order*”); *see also id.* ¶¶ 21-23.

⁸ *Id.* ¶¶ 20, 21.

⁹ See *Verizon*, 770 F.3d at 967; *Qwest Corp. v. FCC*, 689 F.3d 1214, 1225-26 (10th Cir. 2012) (petitioner seeking forbearance bears the burden of proof).

competition in the provision of traditional TDM service. Moreover, USTelecom contends that ILECs have the incentive to sell traditional TDM service at wholesale on reasonable rates, terms and conditions¹⁰ but provides no support for its assertion. This *ipse dixit* does not demonstrate that competition in the relevant markets creates such an incentive.

The Commission Must Apply Its Traditional Market Power Test. There is no merit to USTelecom’s assertion that Commission precedent supports its request for “nationwide” forbearance without the need to assess competition in relevant markets. In fact, the opposite is true. In analyzing a request for forbearance that, like the instant Petition, seeks relief from the core local competition provisions of the 1996 Act, the Commission must apply its traditional market power test. This analytical framework, which requires identification of relevant product and geographic markets and an assessment of competition therein, is based on well-accepted principles of economics that have been developed in antitrust law. As the Commission explained in the *Qwest Phoenix Forbearance Order*, the traditional market power framework “is the precise inquiry specified in section 10(a)(1)” of the Act and is “designed to identify when competition is sufficient to constrain carriers from imposing unjust, unreasonable, or unjustly or unreasonably discriminatory rates, terms, and conditions, or from acting in an anticompetitive manner.”¹¹ As such, the Commission’s traditional market power test “is better suited” than any other analytical framework “to analyzing claims that competition in the legacy services market is sufficient to satisfy the three-part section 10 forbearance criteria[.]”¹²

¹⁰ See Petition at 29.

¹¹ See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd. 8622, ¶¶ 37-45 (2010), *aff’d* by *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

¹² *Id.*

Competition and Consumers Would be Harmed by Forbearance From the Avoided-Cost Resale Requirement. As explained by Sean Sullivan, MetTel’s Vice President of Product Management and Regulatory Affairs, in his declaration submitted herewith,¹³ traditional TDM service remains vitally important to MetTel’s customers, and eliminating the Section 251(c)(4) avoided-cost resale requirement would result in significant harm to competition and consumers.

First, traditional TDM service has characteristics that other business telephone services do not provide. Because it generally is not self-powered, managed VoIP, whether provided by a cable operator or another type of provider, does not meet the needs of MetTel’s customers that rely on traditional TDM service.

Fixed and mobile wireless services also are not substitutes for traditional TDM service. To begin with, these services are not available at many customer locations. But even where they are available, these services do not meet the needs of MetTel’s customers for several reasons. In the case of fixed wireless, line-of-sight restrictions, limited range and insufficient reliability make the service unsuitable for business customers that demand traditional TDM service.¹⁴ In the case of mobile wireless service, “[w]ireless signal ‘dead zones’ are widespread, and wireless service may be overloaded and inoperable during emergencies or at unexpected peak times.”¹⁵

Many of MetTel’s multi-location business customers (“MLBs”) that purchase traditional TDM service “depend on the fact that copper networks are self-powered and therefore continue to operate in the event of power outages, without the need for additional fail-safes such as generators or batteries.”¹⁶ Often, customers depend on traditional TDM service to ensure critical

¹³ Declaration of Sean J. Sullivan (“Sullivan Decl.”) ¶ 2, appended to this Opposition.

¹⁴ *Id.* ¶ 12.

¹⁵ *Id.*

¹⁶ *Id.* ¶ 14.

communications, even when they also use IP-based services, including VoIP, at the same locations. For example, one MetTel customer is a large national healthcare and senior living provider that purchases [BEGIN HCI] [END HCI] TDM lines from MetTel¹⁷ in [BEGIN HCI] [END HCI].¹⁸ Mr. Sullivan observes that “[g]iven the nature of the healthcare services it provides and the population it serves, this MetTel customer requires the reliability and self-powering that traditional TDM service provide.”¹⁹ Another such customer, to which MetTel provides more than [BEGIN HCI] [END HCI] TDM lines, is a large national transportation services provider.²⁰ “These lines enable MetTel’s customer to provide ticket purchasing, communication of departure and arrival status, and other important business functions” across its nationwide network of locations.²¹

For many of MetTel’s customers with far-flung and rural locations, traditional TDM service is the only available fixed voice service. Accordingly, even if MetTel’s customers viewed other voice services as reasonable substitutes for traditional TDM service, which, as explained, they do not, traditional TDM is the only voice service option in these regions. Mr. Sullivan explains: “one of MetTel’s largest customers is a waste management company that provides solid waste and recycling services for commercial, industrial, municipal, and residential

¹⁷ A small amount MetTel’s TDM lines in service reported herein – approximately two percent – are TDM lines provided over fiber networks. In addition, a *de minimis* number of the traditional TDM service lines leased by MetTel are used to provide DSL.

¹⁸ Sullivan Decl. ¶ 15.

¹⁹ *Id.*

²⁰ *Id.* ¶ 17.

²¹ *Id.*

customers,” which, because of the customer’s many rural locations across the country, “relies on traditional TDM service[.]”²²

Government agencies are among MetTel’s multi-location customers. As Mr. Sullivan observes, “[g]overnment agencies also have special needs that require the provision of traditional TDM[.]”²³ For example “MetTel provides [BEGIN HCI] [END HCI] TDM lines to one of its largest customers, a federal agency that has significant law enforcement and public safety responsibilities, many in remote locations throughout the country. This agency depends on the reliability of traditional TDM service to ensure that critical communications functionality is available wherever and whenever it is needed.”²⁴

Second, MetTel’s experiences provide evidence of the ILECs’ substantial and persisting market power in the provision of traditional TDM service. As Mr. Sullivan explains “MetTel must purchase wholesale traditional TDM service from the ILECs because no provider other than the ILEC in its home territory has the physical infrastructure in place to provide traditional TDM service to and from every MLB’s locations.”²⁵ To serve these customers, competitor like MetTel “typically rely upon copper connections that already exist at their customers’ locations and for which their customers already have the necessary equipment.”²⁶

High entry barriers characterize the market for traditional TDM service. Indeed, it is not realistic for MetTel or any other competitor to construct facilities to provide traditional TDM service. This is because typically “customers have only a few lines at each location, making it

²² *Id.* ¶ 18.

²³ *Id.* ¶ 19.

²⁴ *Id.*

²⁵ *Id.* ¶ 22.

²⁶ *Id.*

economically infeasible to build out a network at each location.”²⁷ The low revenues generated by the sale of low-bandwidth services also makes facilities construction economically infeasible.

Third, there is no question that the avoided-cost resale requirement remains necessary to promote competition and ensure reasonable rates for traditional TDM service. Because they compete for retail customers directly with MetTel and other competitors, ILECs have the incentive to charge high prices for traditional TDM service, but the avoided cost resale requirement provides a counterweight to this incentive.

MetTel obtains traditional TDM service in two ways: (1) through commercially negotiated wholesale agreements and (2) by purchasing wholesale services from ILECs at avoided-cost resale rates pursuant to Section 251(c)(4), subject to state supervision. Although ILECs do not directly rely on the avoided-cost discount to determine the prices contained in commercial wholesale agreements, “the existence of the option of avoided-cost resale effectively limits the ability of any particular ILEC to demand higher rates under commercial wholesale agreements.”²⁸ Indeed, “the continued availability of avoided-cost resale has effectively kept these discounts in check so that MetTel is typically able to obtain rates under commercial wholesale agreements” that can be discounted as much as [BEGIN HCI] [END HCI], depending on the state and location within the state where the service is offered.²⁹ Absent the avoided-cost resale requirement, ILECs’ wholesale prices under commercial agreements “could effectively reach the ILEC’s retail price to its own customers, making it impossible for companies like MetTel to remain competitive.”³⁰

²⁷ *Id.*

²⁸ *Id.* ¶ 25.

²⁹ *Id.*

³⁰ *Id.* ¶ 26.

In addition, MetTel sometimes finds that there are advantages to relying on avoided-cost resale, rather than purchasing traditional TDM service pursuant to commercially negotiated wholesale agreements. And in some circumstances, “large independent ILECs simply refuse to enter into commercial wholesale agreements.”³¹ Where that is the case, MetTel has no choice but to purchase traditional TDM service subject to the avoided-cost resale requirement.³² It also bears emphasis that “ILECs are under no obligation to provide services under wholesale agreements, and, if they were to withdraw those agreements, avoided-cost resale would be the only backstop available to MetTel.”³³

There is no merit to USTelecom’s assertion that Section 251(b)(1), along with Sections 201 and 202,³⁴ will ensure that ILECs will resell local exchange services without unreasonable or discriminatory conditions or limitations. This is because Section 251(b)(1) does not include an avoided-cost methodology for setting rates, or, for that matter, any *ex ante* rate regulation at all. This increases the likelihood that ILECs would charge above-cost wholesale rates, thereby placing MetTel and other competitors in a price squeeze. Customers subjected to unjust and unreasonable and/or unreasonably discriminatory ILEC conduct would instead be required to initiate *post hoc* enforcement proceedings, which are costly and may take months or years to resolve, with no assurance of success. In any event, by the time an enforcement proceeding commences, never mind when it concludes, the ILEC is already charging unjust and unreasonable and/or unreasonably discriminatory rates, and the harm is already done. Furthermore, resale pursuant to Section 251(b)(1) places the burden of showing harm on the

³¹ *Id.* ¶ 29.

³² *Id.*

³³ *Id.* ¶ 25.

³⁴ 47 U.S.C. §§ 201(b), 202(a), 251(b)(1).

party alleging harm, which would exacerbate the competitive disadvantage that MetTel and other competitors would experience.³⁵ This is especially so because competitors like MetTel lack access to information regarding the rates ILECs charge in commercial wholesale agreements negotiated with other parties.

Fourth, forbearance from the avoided-cost resale requirement would harm MetTel’s business and government customers. Mr. Sullivan attests that, based on his experience as a Verizon executive, “the inevitable result of forbearance from Section 251(c)(4) will include [BEGIN HCI] [END HCI] that depend on traditional TDM service.”³⁶ And MetTel’s government customers “would lose access to critical communications functionalities.”³⁷

Government agencies that purchase services under the General Services Administration (“GSA”)’s Enterprise Infrastructure Solutions (“EIS”) program also would be harmed by the elimination of Section 251(c)(4). This is because competitors such as MetTel, Granite, BT, and Core Technologies that resell traditional TDM service are eligible to provide such service to government customers under EIS. In fact, a key difference between EIS and its predecessor, Networx, is that several EIS contractors are CLECs, while Networx contractors are ILECs.³⁸ This reflects GSA’s desire to ensure that competitors receive sufficient opportunities to serve

³⁵ Sullivan Decl. ¶ 30.

³⁶ *Id.* ¶ 31.

³⁷ *Id.*

³⁸ See Networx Industry Partners, <https://www.gsa.gov/technology/technology-purchasing-programs/telecommunications-and-network-services/networx> (“Networx has contracts with the following industry leaders: AT&T Inc., CenturyLink Inc., Level 3 Communications, and Verizon Communications.”) (last updated May 16, 2018).

government users. If the avoided-cost resale requirement is eliminated, these competitors will be unable to compete with ILECs to provide service under EIS, thereby frustrating GSA’s objective.

If forbearance is granted, “ILECs likely will raise the prices they charge MetTel for services made available in commercial wholesale agreements,”³⁹ [BEGIN HCI]

[END HCI] Customers also would be harmed by the loss of functionalities that are only available through the purchase of avoided-cost resale.⁴⁰ And MLBs “will also bear the cost of losing the value and efficiency of MetTel’s overall product, such as the benefits of a one-stop shop for national retail voice services.”⁴¹

For the foregoing reasons, the Commission should deny USTelecom’s Petition for forbearance insofar as it seeks relief from the Category 1 obligations under Section 251(c)(4) and the associated obligations under Section 251 and Section 252.

Respectfully submitted,

/s/ Thomas Jones

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August 6, 2018

³⁹ Sullivan Decl. ¶ 31.

⁴⁰ *Id.* ¶ 32.

⁴¹ *Id.* ¶ 33.

Declaration of Sean J. Sullivan

DECLARATION OF SEAN J. SULLIVAN

I, Sean J. Sullivan, hereby declare:

1. I make this declaration based upon my personal knowledge, information and belief, and in support of the Opposition of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MetTel”) to the Petition of USTelecom – The Broadband Association (“USTelecom”) for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks.¹

2. I am currently Vice President of Product Management and Regulatory Affairs, a position I have held since joining MetTel in January 2017. Prior to that, I had 20 years of executive experience at Verizon in marketing, sales, and operations, all of which was spent on the wholesale side of Verizon. During my employment at Verizon, I had the opportunity to work with many different CLECs, including MetTel. Between 2008 and 2014, I served as Director of Verizon’s core transport services, including such local services as avoided-cost resale, UNEs, and services under commercial wholesale agreements such as Wholesale Advantage. In this capacity, I was responsible for the management, product development, marketing, and, where applicable, pricing of these products. I earned a Bachelor’s degree in Business Management from Providence College and a Master’s degree in Applied Management from Lesley University. During my employment with MetTel, I have repeatedly been involved in negotiations with incumbent local exchange carriers (“Incumbents” or “ILECs”) for the purchase of wholesale voice and data services.

¹ Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018).

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3. In this declaration, I will discuss the continuing importance of traditional voice services provided by ILECs generally, discuss the value that the provision of these and related services allow MetTel to provide to its customers, detail the continuing importance of avoided-cost resale specifically to MetTel and its customers, and describe the harm to competition and MetTel's customers that would result from elimination of the avoided-cost resale requirement.

I. The Value of MetTel's Services and The Use of Avoided-Cost Resale

4. Companies like MetTel provide telephone services to businesses that tend to have multiple locations across multiple ILEC territories that demand reliable connectivity, but not large amounts of bandwidth, at each individual location. Such multi-location businesses ("MLBs") include retailers, restaurants, pharmaceutical companies, government agencies, financial service companies, and health and wellness facilities. MetTel's customers include six of the Dow 30 companies. MetTel also provides services to businesses like neighborhood shops with one or only a few locations that do not demand large bandwidth at each location.

5. In my experience, MLBs prefer competitive carriers like MetTel because of the "one-stop shop" (including voice service, single billing functionality, strong customer support and technical assistance) these carriers provide. MetTel has been successful in supplying retail voice services to MLBs and is among the most efficient competitive providers of such services in the United States, building on the economies of scale it has achieved through its high degree of automation and industry expertise. For example, MetTel provides award-winning customer support and technical assistance as evidenced by its earning the Stevie Award for customer service the last four consecutive years. MetTel creates efficiencies for its customers in multiple ways. Notably, MetTel has differentiated itself from other retail voice providers by

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offering 24/7/365 support, consolidated billing, and access to its Bruin portal, enabling customers to see real-time status of the products they buy from MetTel. MetTel’s “customer first” approach means that MetTel manages all customers’ relationships with vendors and network suppliers, allowing MetTel’s customers to spend their time running their businesses. Through experienced employees, high levels of automation, and scalable, repeatable processes, MetTel is able to provide its MLB customers with a one-stop-shop experience.

6. MetTel has also achieved success by catering to the specific needs of MLBs, which are different from a household or a small business. MetTel provides seamless communications among and between the MLB’s locations and between those locations and the MLB’s customers. Although each MLB location does not require a large amount of telephone lines, when an MLB is considered as a whole, the need for connectivity to reach many locations becomes substantial. Indeed, MLBs need several lines for each of their locations—often dozens within a state and hundreds or even thousands nationwide. MetTel specializes in, among other things, managing hundreds of thousands of business lines that carry voice traffic to thousands of business locations across the country.

7. MetTel provides substantial assistance in managing the relationships between its customers and the ILECs. MetTel coordinates with ILECs for the provision of services to its customers using copper-based time division multiplexing (“TDM”) technologies (“traditional TDM service”) and handles the processing and payment of dozens of separate bills. Only [BEGIN HCI] [END HCI] of MetTel’s traditional TDM service customers operate in just one ILEC’s territory, with [BEGIN HCI] [END HCI] operating in two or more ILEC territories. These customers benefit greatly from MetTel’s management of ILEC relationships.

8. MetTel's smaller business customers also value the traditional TDM service they purchase. While [BEGIN HCI] [END HCI] of MetTel's revenues come from business customers with less than 10 locations, these small customers make up [BEGIN HCI] [END HCI] of MetTel's customer base of over [BEGIN HCI] [END HCI] customers. Frequently, small business customers choose MetTel as an alternative to the service provided by the ILEC or because of MetTel's expertise in advising on the customer's telecommunications needs. But without Section 251(c)(4)'s avoided-cost discount, it would no longer be profitable for MetTel to provide services to many of these small customers. As a result, these customers would be left with no choice but to purchase traditional TDM service from the ILEC, losing the value MetTel provides.

II. The Continuing Importance of ILEC-Provided Traditional TDM Service, Including Avoided-Cost Resale, to Competitive Carriers and Their Customers

9. TDM and circuit switching technologies are used to provide reliable services, predominantly voice service, over an effectively ubiquitous ILEC network. Traditional TDM service is typically provided over physical copper wire infrastructure, particularly non-broadband DS0s, built by the ILECs predominantly when they operated as regulated monopolies. Although traditional TDM service can be provided over fiber, TDM-over-fiber services are distinguishable from TDM services provided over copper because they lack certain characteristics. For example, TDM-over-fiber is not self-powering, whereas TDM-over-copper will remain in service during a power disruption.

10. Avoided-cost resale remains important to MetTel customers that use traditional TDM service. Avoided-cost resale is sometimes preferred over other forms of traditional TDM service because it is available with product features that are not available through commercial wholesale contracts. On occasion, customers require Centrex functionality,

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where equipment used to provide these services are located at the ILEC's central office and not at customers' business locations. Other MetTel customers require private lines, such as a line directly connecting the customer's premises to a fire station. ILECs generally do not make such private lines available through commercial arrangements.

11. Although new forms of voice services have emerged, such as Voice-over-Internet Protocol ("VoIP"), which is transmitted over networks that use TCP/IP technology, copper-based traditional TDM service continues to provide benefits that services like VoIP cannot. VoIP services generally are not self-powered. Therefore, our customers do not view managed VoIP services, whether cable or non-cable, as a substitute for traditional TDM service.

12. Nor can fixed and mobile wireless services serve as substitutes for traditional TDM service. As a threshold matter, fixed wireless services are not broadly deployed and thus are unavailable at many customer locations. These services also suffer from well-known limitations, including line-of-sight restrictions and limited range where they have been deployed. Second, fixed and mobile wireless services do not provide sufficient reliability to meet the needs of customers who rely on traditional TDM service. Wireless signal "dead zones" are widespread, and wireless service may be overloaded and inoperable during emergencies or at unexpected peak times. Third, mobile wireless service also lacks functionalities, such as faxing and "rollover" lines for business use, required by customers. Some customers, like pharmacies, must maintain fax machines that use traditional TDM service to ensure they receive doctor prescriptions. Others, including most MLBs, use traditional TDM service to take customer calls and typically require for business use multiple lines that "rollover" from the prime line when it is in use, thus allowing the business to receive multiple, simultaneous calls directed to the same telephone number by hunting for another business line when the first line is being used.

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13. Traditional TDM service continues to be important to both MetTel's MLB and small business customers. From MetTel's perspective, the use of traditional TDM service is not going away. Rather, as the following chart demonstrates, MetTel's customers' use of TDM lines for voice services **[BEGIN HCI]** **[END HCI]** and demand for these services remains substantial.²

[BEGIN HCI]

[END HCI]

A. Reliable Connections over Traditional TDM Service

14. Many customers that use traditional TDM service depend on the fact that copper networks are self-powered and therefore continue to operate in the event of power outages, without the need for additional fail-safes such as generators or batteries. These customers include businesses that rely on traditional TDM service as a back-up means for critical

² A small amount MetTel's TDM lines in service reported herein – approximately two percent – are TDM lines provided over fiber networks. In addition, a *de minimis* number of the traditional TDM service lines leased by MetTel are used to provide DSL.

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communications, even when they also use IP-based services, including VoIP, at the same locations.

15. For example, a large national healthcare and senior living provider is a MetTel customer with [BEGIN HCI] [END HCI] [BEGIN HCI] [END HCI]. The facilities operated by this customer provide independent living, assisted living, rehabilitation, and skilled nursing care to its residents. Given the nature of the healthcare services it provides and the population it serves, this MetTel customer requires the reliability and self-powering of traditional TDM service. A similar senior living company is a customer to which MetTel provides [BEGIN HCI] [END HCI] TDM lines, and it requires traditional TDM service for the same reasons.

16. The provision of reliable connectivity has special importance for those businesses that rely on traditional TDM service to ensure the operation of critical systems such as medical alerts, fire/sprinkler monitoring, gas pipeline monitoring, bank vault or burglar alarms, and elevators that require reliable back-up systems for unexpected failures, even where VoIP services provided over managed networks (i.e., not over the public Internet) are available. Property management companies, for example, require reliable fire/sprinkler, burglar, and elevator alarms across the wide range of buildings they manage. These companies are unable to rely on managed VoIP and wireless services that are not self-powered and cannot function without electricity. Additionally, such companies are sometimes required by state or municipal regulations to maintain POTS lines, or to use such lines, rather than VoIP lines, for the transmittal of emergency calls.

17. MetTel also provides over [BEGIN HCI] [END HCI] TDM lines to a large national transportation services provider to support its nationwide network of locations.

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These lines enable MetTel's customer to provide ticket purchasing, communication of departure and arrival status, and other important business functions.

B. Widespread and Rural Locations

18. In many rural areas, there is frequently no other fixed voice service than traditional TDM service. Thus, even if there were significant substitution between other voice applications and traditional TDM service for the customers MetTel serves (which there is not for the reasons described above), in these regions there can be no question that traditional TDM service is the only choice. For example, one of MetTel's largest customers is a waste management company that provides solid waste and recycling services for commercial, industrial, municipal, and residential customers **[BEGIN HCI]**

[END HCI]. Many of these locations are in rural areas, and MetTel's customer relies on traditional TDM service to meet its telecom needs.

C. Particularized Needs of Governmental Agencies

19. Government agencies also have special needs that require the provision of traditional TDM service, as the experiences of one of MetTel's government customers illustrates. MetTel provides **[BEGIN HCI]** **[END HCI]** TDM lines to one of its largest customers, a federal agency that has significant law enforcement and public safety responsibilities, many in remote locations throughout the country. This agency depends on the reliability of traditional TDM service to ensure that critical communications functionality is available wherever and whenever it is needed.

20. In addition, many government customers rely heavily on traditional TDM service purchased through avoided-cost resale. For example, of the [BEGIN HCI] [END HCI] TDM lines purchased by the agency mentioned above, [BEGIN HCI] [END HCI] are purchased through avoided-cost resale. In contrast, MetTel customers on average use avoided-cost resale to meet [BEGIN HCI] [END HCI] of their TDM requirements.

21. For all of these reasons, overall demand for traditional TDM service remains strong.

III. MetTel's Ability to Provide Traditional TDM Service As Part of its Overall Service Offering Is Dependent on ILECs

22. MetTel must purchase wholesale traditional TDM service from the ILECs because no provider other than the ILEC in its home territory has the physical infrastructure in place to provide traditional TDM service to and from every MLB's locations. In serving MLB customers, MetTel and other competitors typically rely upon copper connections that already exist at their customers' locations and for which their customers already have the necessary equipment. The entry barriers associated with deploying networks for traditional TDM services are high. Indeed, investment in facilities for low-bandwidth voice services over copper is not realistic for MetTel or any other competitive LEC. Many of MetTel's MLB customers have only a few lines at each location, making it economically infeasible to build out a network at each location. Additionally, non-ILECs construct new facilities over fiber, not copper.

IV. The Continuing Importance of Avoided-Cost Resale to MetTel and Its Customers

23. In addition to selling wholesale access lines that MetTel and other companies use to provide traditional TDM service to MLBs, ILECs directly compete with MetTel and similar companies in the sale of downstream retail voice services to MLBs. ILECs

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therefore have a direct economic incentive to charge companies like MetTel high prices for traditional TDM service.

24. MetTel obtains wholesale access from ILECs traditional TDM service in the ILEC's territory in primarily two ways.

25. The first option is to purchase local voice service through commercial wholesale agreements with the ILECs. The prices contained in these agreements are not set directly by application of avoided-cost rate regulation, but the existence of the option of avoided-cost resale effectively limits the ability of any particular ILEC to demand higher rates under commercial wholesale agreements. Despite natural incentives of ILECs to raise the prices for wholesale services for competitors such as MetTel, the continued availability of avoided-cost resale has effectively kept these discounts in check so that MetTel is typically able to obtain rates under commercial wholesale agreements that are up to [BEGIN HCI] [END HCI] discounts from retail rates offered, depending on the state and location within the state. It is important to note that ILECs are under no obligation to provide services under wholesale agreements, and, if they were to withdraw those agreements, avoided-cost resale would be the only backstop available to MetTel.

26. Absent the avoided-cost resale requirement, wholesale prices charged by an ILEC could effectively reach the ILEC's retail price to its own customers, making it impossible for companies like MetTel to remain competitive. It is necessary to keep the avoided-cost resale requirement in place because it is the backstop that prevents shrinking wholesale discounts that will cripple competition.

27. The second option is to purchase traditional TDM service from ILECs at avoided-cost resale rates pursuant to Section 251(c)(4) of the Communications Act, as made

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available to MetTel under state supervision. Generally, ILECs determine which retail plans to offer in a state. For example, a plan may set a price based on term commitments and number of lines. If an ILEC sells a retail service, then MetTel has a right to purchase that retail service at a discounted rate that reflects the costs that the ILEC avoids because it does not have to service a retail customer. The terms and conditions governing avoided-cost resale are set forth in interconnection agreements that are subject to review and approval by state public utility commissions. Negotiation for these services easier and more efficient because state regulatory commissions set the avoided-cost discount rate to be used by ILECs within their jurisdiction.

28. In certain instances, there are advantages to relying on avoided-cost resale, which accounts for [BEGIN HCI] [END HCI] of the TDM lines provided by MetTel, rather than purchasing traditional TDM service pursuant to commercially negotiated wholesale agreements.

29. MetTel is sometimes able to get a better rate for avoided-cost resale than it is able to obtain through a commercial wholesale agreement. For example, some large independent ILECs simply refuse to enter into commercial wholesale agreements. This means that avoided-cost resale is the only practicable and economically-efficient means by which MetTel can obtain access needed to provide traditional TDM service from these ILECs.

30. Resale pursuant to Section 251(b)(1) is not an effective substitute for avoided-cost resale because it puts the burden of demonstrating harm on competitive providers like MetTel that both lack access to information about the rates ILECs charge other customers pursuant to commercial negotiation and have structurally weaker bargaining power than the ILECs, who possess market power because of their ownership of the copper-based infrastructure used to provide traditional TDM. Section 251(b)(1) lacks *ex ante* rate regulation and would

require that *post hoc* enforcement proceedings be instituted at the state or federal level whenever MetTel believes it is being treated unfairly. Those proceedings would not work well both because the ILECs are loathe to reveal their retail costs and because MLBs will not wait months or years for the outcome of such regulatory proceedings. The Section 251(b)(1) regime therefore would allow ILECs to gain an unfair business advantage.

V. Harm to Competition and Customers from Elimination of the Avoided-Cost Resale Requirement

31. In my opinion, as a former long-time executive at Verizon, the inevitable result of forbearance from Section 251(c)(4) will [BEGIN HCI]

[END HCI] which rely on traditional TDM service in the day-to-day operation of their businesses, including for ordinary customer telephone calls, the operation of burglar alarms and fax machines, and a reliable means of accessing computerized systems and customers during electrical blackouts caused by bad weather. Small businesses would also be injured. And government users that depend on traditional TDM service in remote areas and in law enforcement and public safety contexts would lose access to critical communications functionalities. Moreover, but for the avoided-cost resale protections provided by Section 251(c)(4), it is my opinion that ILECs likely will raise the prices they charge MetTel for services made available in commercial wholesale agreements, causing direct harm to competition.

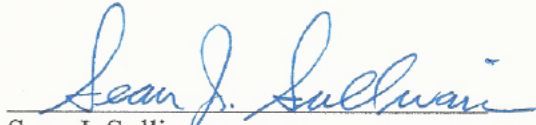
32. Further, as explained, the expected harm is not limited to price. Customers sometimes request functionalities that are only available through the purchase of avoided-cost resale. For example, some MetTel customers request private lines that ILECs generally do not make available through commercial arrangement.

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33. MLBs will also bear the cost of losing the value and efficiency of MetTel's overall product, such as the benefits of a one-stop shop for national retail voice services, which MLBs prefer because of its superior product characteristics.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing declaration is true and correct.

Executed on August 6, 2018.

A handwritten signature in blue ink, reading "Sean J. Sullivan", is written over a horizontal line.

Sean J. Sullivan
Vice President,
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